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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 KEVIN COX,

11 Plaintiff,

12 vs.

13
14 MARUYAMA FOOD SYSTEMS INC.;
15 and DOES 1 to 10,
16 Defendants.
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Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR
VIOLATION OF:

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT, CAL CIV. CODE §§ 51 -
52 et seq.;
3. CALIFORNIA'S DISABLED
PERSONS ACT, CAL CIV. CODE §54 et
seq.
4. CALIFORNIA HEALTH & SAFETY
CODE § 19955, et seq.
5. NEGLIGENCE

24
25 Plaintiff KEVIN COX ("Plaintiff") complains of Defendants MARUYAMA
26 FOOD SYSTEMS INC.; and DOES 1 to 10 ("Defendants") and alleges as follows:

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PARTIES

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2 1. Plaintiff is a California resident with a physical disability with substantial
3 limitation in his ability to walk. Plaintiff suffers from complete paraplegia due to a spinal
4 cord injury and requires the use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a restaurant
7 (“Business”) located at or about 127 Japanese Village Plaza Mall, Los Angeles,
8 California.

9 3. The true names and capacities, whether individual, corporate, associate or
10 otherwise of Defendant DOES 1 to 10, and each of them, are unknown to Plaintiff, who
11 therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court
12 to amend this Complaint when the true names and capacities have been ascertained.
13 Plaintiff is informed and believes and, based thereon, alleges that each such fictitiously
14 named Defendants are responsible in some manner, and therefore, liable to Plaintiff for
15 the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
19 the things alleged herein was acting with the knowledge and consent of the other
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or
22 failure to act by a defendant or Defendants, such allegations and references shall also be
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
24 and severally.

JURISDICTION AND VENUE

25
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
28 *seq.*)

1 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same nucleus of operating facts, are also brought under California law,
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
4 54, 54., 54.3 and 55.

5 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6 9. Venue is proper in this court pursuant to 28 USC §1391(b). The real
7 property which is the subject of this action is located in this district, Los Angeles County,
8 California, and that all actions complained of herein take place in this district.

9 **FACTUAL ALLEGATIONS**

10 10. In or about November of 2022, Plaintiff went to the Business.

11 11. The Business is a restaurant business establishment, open to the public, and
12 is a place of public accommodation and affects commerce through its operation.
13 Defendants provide restrooms for customers.

14 12. While attempting to enter the Business during each visit, Plaintiff personally
15 encountered a number of barriers that interfered with his ability to use and enjoy the
16 goods, services, privileges, and accommodations offered at the Business.

17 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
18 included, but were not limited to, the following:

19 a. Defendants failed to comply with the federal standard for the
20 restroom. The restroom was not accessible and violated various
21 American with Disability Act Accessibility Guideline ("ADAAG")
22 requirements, including but not limited to:

- 23 (i) toilet flush;
24 (ii) door lock;
25 (iii) door handle;
26 (iv) knee clearance;
27 (v) toilet cover dispenser; and
28 (vi) mirror

- 1 a. A failure to make reasonable modification in policies, practices, or
2 procedures, when such modifications are necessary to afford such
3 goods, services, facilities, privileges, advantages, or accommodations
4 to individuals with disabilities, unless the entity can demonstrate that
5 making such modifications would fundamentally alter the nature of
6 such goods, services, facilities, privileges, advantages, or
7 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to take such steps as may be necessary to ensure that no
9 individual with a disability is excluded, denied services, segregated or
10 otherwise treated differently than other individuals because of the
11 absence of auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would fundamentally alter the
13 nature of the good, service, facility, privilege, advantage, or
14 accommodation being offered or would result in an undue burden. 42
15 U.S.C. § 12182(b)(2)(A)(iii).
- 16 c. A failure to remove architectural barriers, and communication barriers
17 that are structural in nature, in existing facilities, and transportation
18 barriers in existing vehicles and rail passenger cars used by an
19 establishment for transporting individuals (not including barriers that
20 can only be removed through the retrofitting of vehicles or rail
21 passenger cars by the installation of a hydraulic or other lift), where
22 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23 d. A failure to make alterations in such a manner that, to the maximum
24 extent feasible, the altered portions of the facility are readily
25 accessible to and usable by individuals with disabilities, including
26 individuals who use wheelchairs or to ensure that, to the maximum
27 extent feasible, the path of travel to the altered area and the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with
2 disabilities where such alterations to the path or travel or the
3 bathrooms, telephones, and drinking fountains serving the altered
4 area are not disproportionate to the overall alterations in terms of cost
5 and scope. 42 U.S.C. § 12183(a)(2).

6 21. Toilet flush controls shall be hand operated or automatic. Hand operated
7 flush controls shall comply with 309. Flush controls shall be located on the open side of
8 the water closet. 2010 ADA Standards § 604.6.

9 22. Here, Defendants failed to install a proper flush control as the one provided
10 was not installed on the open side.

11 23. Handles, pulls, latches, locks, and other operating devices on accessible
12 doors shall have a shape that is easy to grasp with one hand and does not require tight
13 grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms,
14 push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors
15 are fully open, operating hardware shall be exposed and usable from both sides.
16 Hardware required for accessible door passage shall be mounted no higher than 48 in
17 (1220 mm) above finished floor. 1991 ADA Standards § 4.13.9.

18 24. Here, Defendants failed to provide accessible handle and locks on the
19 restroom door. The door consisted of a latch lock that was difficult to grasp and operate
20 without a proper handle.

21 25. Water supply and drain pipes under lavatories and sinks shall be insulated or
22 otherwise configured to protect against contact. There shall be no sharp or abrasive
23 surfaces under lavatories and sinks. 2010 ADA Standards § 606.5.

24 26. Here, Defendants failed to properly insulate the drain pipes under the sink.

25 27. The *space* between the wall and the grab bar shall be 1½ inches (38 mm).
26 The *space* between the grab bar and projecting objects below and at the ends shall be 1½
27 inches (38 mm) minimum. The *space* between the grab bar and projecting objects above
28 shall be 12 inches (305 mm) minimum. 2010 ADA Standards § 609.3.

1 28. Here, Defendants failed to properly install the toilet cover dispenser pursuant
2 to the Standards as the one provided had less than 12 inches clearance between the grab
3 bar and the toilet cover dispenser.

4 29. Mirrors shall be mounted with the bottom edge of the reflecting surface no
5 higher than 40 in (1015 mm) above the finish floor. 1991 ADA Standards § 4.19.6.

6 30. Here, Defendants failed to properly install the mirror as it was installed too
7 high.

8 31. A public accommodation shall maintain in operable working condition those
9 features of facilities and equipment that are required to be readily accessible to and usable
10 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

11 32. By failing to maintain the facility to be readily accessible and usable by
12 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
13 regulations.

14 33. The Business has denied and continues to deny full and equal access to
15 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
16 discriminated against due to the lack of accessible facilities, and therefore, seeks
17 injunctive relief to alter facilities to make such facilities readily accessible to and usable
18 by individuals with disabilities.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

21 34. Plaintiff incorporates by reference each of the allegations in all prior
22 paragraphs in this complaint.

23 35. California Civil Code § 51 states, "All persons within the jurisdiction of this
24 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
25 national origin, disability, medical condition, genetic information, marital status, sexual
26 orientation, citizenship, primary language, or immigration status are entitled to the full
27 and equal accommodations, advantages, facilities, privileges, or services in all business
28 establishments of every kind whatsoever."

1 36. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,
 2 or make any discrimination or distinction contrary to Section 51, 515, or 51.6, is liable
 3 for each and every offense for the actual damages, and any amount that may be
 4 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
 5 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
 6 attorney’s fees that may be determined by the court in addition thereto, suffered by any
 7 person denied the rights provided in Section 51, 51.5, or 51.6.

8 37. California Civil Code § 51(f) specifies, “a violation of the right of any
 9 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
 10 shall also constitute a violation of this section.”

11 38. The actions and omissions of Defendants alleged herein constitute a denial
 12 of full and equal accommodation, advantages, facilities, privileges, or services by
 13 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
 14 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
 15 51 and 52.

16 39. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
 17 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
 18 damages as specified in California Civil Code §55.56(a)-(c).

19 **THIRD CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

21 40. Plaintiff incorporates by reference each of the allegations in all prior
 22 paragraphs in this complaint.

23 41. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
 24 entitled to full and equal access, as other members of the general public, to
 25 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
 26 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
 27 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
 28 of transportation (whether private, public, franchised, licensed, contracted, or otherwise

1 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
2 places of public accommodations, amusement, or resort, and other places in which the
3 general public is invited, subject only to the conditions and limitations established by
4 law, or state or federal regulation, and applicable alike to all persons.

5 42. California Civil Code § 54.3(a) states, “Any person or persons, firm or
6 corporation who denies or interferes with admittance to or enjoyment of public facilities
7 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an
8 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
9 the actual damages, and any amount as may be determined by a jury, or a court sitting
10 without a jury, up to a maximum of three times the amount of actual damages but in no
11 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be
12 determined by the court in addition thereto, suffered by any person denied the rights
13 provided in Section 54, 54.1, and 54.2.

14 43. California Civil Code § 54(d) specifies, “a violation of the right of an
15 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
16 constitute a violation of this section, and nothing in this section shall be construed to limit
17 the access of any person in violation of that act.

18 44. The actions and omissions of Defendants alleged herein constitute a denial
19 of full and equal accommodation, advantages, and facilities by physically disabled
20 persons within the meaning of California Civil Code § 54. Defendants have
21 discriminated against Plaintiff in violation of California Civil Code § 54.

22 45. The violations of the California Disabled Persons Act caused Plaintiff to
23 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
24 statutory damages as specified in California Civil Code §55.56(a)-(c).

25 **FOURTH CAUSE OF ACTION**

26 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

27 46. Plaintiff incorporates by reference each of the allegations in all prior
28 paragraphs in this complaint.

1 47. Plaintiff and other similar physically disabled persons who require the use of
2 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
3 such facility is in compliance with the provisions of California Health & Safety Code §
4 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
5 provisions of California Health & Safety Code § 19955 et seq.

6 48. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
7 that public accommodations or facilities constructed in this state with private funds
8 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
9 Title 1 of the Government Code. The code relating to such public accommodations also
10 require that “when sanitary facilities are made available for the public, clients, or
11 employees in these stations, centers, or buildings, they shall be made available for
12 persons with disabilities.

13 49. Title II of the ADA holds as a “general rule” that no individual shall be
14 discriminated against on the basis of disability in the full and equal enjoyment of goods
15 (or use), services, facilities, privileges, and accommodations offered by any person who
16 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
17 Further, each and every violation of the ADA also constitutes a separate and distinct
18 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
19 award of damages and injunctive relief pursuant to California law, including but not
20 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

21 **FIFTH CAUSE OF ACTION**

22 **NEGLIGENCE**

23 50. Plaintiff incorporates by reference each of the allegations in all prior
24 paragraphs in this complaint.

25 51. Defendants have a general duty and a duty under the ADA, Unruh Civil
26 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
27 to the Plaintiff.
28

52. Defendants breached their duty of care by violating the provisions of ADA, Unruh Civil Rights Act and California Disabled Persons Act.

53. As a direct and proximate result of Defendants' negligent conduct, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief and judgment against Defendants as follows:

1. For preliminary and permanent injunction directing Defendants to comply with the Americans with Disability Act and the Unruh Civil Rights Act;

2. Award of all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts, according to proof;

3. Award of all reasonable restitution for Defendants' unfair competition practices;

4. Reasonable attorney's fees, litigation expenses, and costs of suit in this action;

5. Prejudgment interest pursuant to California Civil Code § 3291; and

6. Such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 15, 2023

SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim
Jason J. Kim, Esq.
Attorneys for Plaintiff